ROBERT L. WHEELER

IBLA 77-429 Decided January 23, 1978

Appeal from decision of the Nevada State Office, Bureau of Land Management, holding that geothermal resources lease N-8484 had terminated for failure to make timely and complete payment of rent.

Affirmed.

1. Accounts: Payments -- Payments: Generally

   Rental payment which arrives at a BLM state office after normal business hours, as set out in 43 CFR 1821-1(a) and (d), is properly recorded by BLM as received at 10 a.m. the next business day, per 43 CFR 1821.2-2(d).

2. Geothermal Leases: Termination

   Under 30 U.S.C. § 1004(c) (1970) and 43 CFR 3205.3-2(a), a geothermal resources lease is automatically terminated when the lessee fails to pay advance rental on or before the anniversary date of the lease. Rental payment which arrives at a BLM state office by Western Union after normal business hours on the anniversary date constitutes payment on the next business day, and is accordingly untimely, so that the lease is properly regarded as having automatically terminated by operation of law.

3. Geothermal Leases: Termination

   Failure to make full payment of rental on a geothermal resources lease on or before its anniversary date automatically terminates the lease. Where a lessee has not filed a formal written relinquishment on

> or before the anniversary date of the lease, as required by 43 CFR 3244.1, his lease account is chargeable with and he is liable to pay advance rental on all of his leasehold on or before the anniversary date. The lessee is not permitted, in lieu of filing a formal relinquishment, to relinquish part of his leasehold by submitting partial payment designated as rental only for the specific acreage he desires to retain.

APPEARANCES: Robert L. Wheeler, Oklahoma City, Oklahoma, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On February 25, 1976, the Nevada State Office of the Bureau of Land Management (BLM), issued a noncompetitive geothermal resources lease to Robert L. Wheeler (appellant). This lease covered sections 1, 2, and 3, T. 35 N., R. 37 E., Mount Diablo meridian, and was effective on June 1, 1976.

At 4:23 p.m. on June 1, 1977, appellant filed a Western Union telegraphic money order for $687.80. A money order message accompanying this payment stated as follows: "Partial payment of geothermal lease N-8484. Payment as to Section 3 only. Relinquishments as to sections one and two will follow by certified mail."

On June 3, 1977, BLM issued a decision terminating geothermal resources lease N-8484 because appellant's telegraphic money order was not received until after normal business hours on June 1, 1976, and because the rental submitted was for only a portion of the lease without a relinquishment of the remaining portion having been timely filed in accordance with 43 CFR 3244.2-1. Thus, BLM concluded, the rental was not only late, but insufficient.

On June 8, 1977, appellant formally filed a partial relinquishment concerning geothermal resources lease N-8484, relinquishing his interest in sections 1 and 2, T. 35 N., R. 37 E., Mount Diablo meridian. Apparently this partial relinquishment and BLM's decision canceling the lease crossed in the mails.

On June 20, 1977, appellant filed his notice of appeal of BLM's decision, along with reasons in support of this appeal. Appellant asserts therein that BLM should not have terminated the lease since, on June 1, its anniversary date, BLM had received appellant's rental payment for section 3 by Western Union money order, along with notice that he would be relinquishing his interest in sections 1 and 2.

[1] Insofar as it concerns the timeliness of appellant's rental payment, the instant case is similar to M. J. Harvey, Jr., 19 IBLA 320 (1975). We held there that rental payment on an oil and gas lease which arrived at the BLM Office by Western Union messenger at 4:05 p.m. on the deadline date (as extended), after the office had closed at 4 p.m., was properly recorded by BLM as received at 10 a.m. the next day.

The Nevada State Office of BLM has public business hours for the filing of applications and other documents from 10 a.m. to 4 p.m. 43 CFR 1821.2-1(a) and (d). Appellant's payment was delivered by Western Union at 4:22 p.m. on June 1, 1977, after the office had closed. The payment was therefore properly deemed by BLM to have been filed at 10 a.m. on June 2, 1977, the day and hour the office was next opened to the public. 43 CFR 1821.2-2(d); see M. J. Harvey, Jr., supra.

[2] Under 30 U.S.C. § 1004(c) (1970), geothermal leases must include a provision that failure to pay rental on or before the anniversary date of the lease shall terminate the lease automatically by operation of law. This provision appears in section 4 of geothermal resources lease N-8484. Additionally, 43 CFR 3205.3-2(a) and 3244.2-1 provide that failure to pay rental on or before the anniversary date of a geothermal resources lease shall automatically terminate the lease. The provisions in the lease and in the regulations are both expressly subject to the exceptions set out in 43 CFR 3244.2-2.

Appellant's payment was filed officially on June 2, 1977, the day after the anniversary date of geothermal resources lease N-8484. Accordingly, the lease automatically terminated by operation of law prior to his making payment, and BLM properly so held.

[3] There is another equally compelling reason that appellant's geothermal resources lease automatically terminated on June 1, 1977. Under 43 CFR 3205.3-2(a) and 3244.2-1, failure to pay the entire rental on or before the anniversary date shall automatically terminate the lease, subject to the exceptions set out in 43 CFR 3244.2-2. Appellant's payment was for $687.80, although a total of $ 1,914 was due as rental on geothermal resources lease N-8484. Even if payment could be regarded as having been made on June 1, 1977, the lease automatically terminated that day because appellant failed to make full payment of the amount due.

Appellant maintains that his Western Union money order message that he would soon relinquish part of his lease ought to have protected him from termination. This argument is without merit. A lease may only be relinquished in accordance with 43 CFR 3244.1. A

relinquishment is effective as of the filing date of a formal written relinquishment containing a full legal description of the land and various statements as to the status of the land and developments on it.

Appellant's money order message was not a formal relinquishment of his interests in sections 1 and 2. By its own terms, which stated that appellant would file formal relinquishments soon, it was not intended as a relinquishment, but rather as a declaration of a future intention to relinquish. In any event, the notice was not a relinquishment because it did not meet the requirements of 43 CFR 3244.1. See D. Miller, 65 I.D. 281 (1958); and Charles E. Boardman, A-27327 (June 6, 1956). Appellant clearly knew these requirements since he subsequently filed a formal relinquishment on June 8, 1977, when it no longer benefited him to do so. Nevertheless, he did not file a valid relinquishment by June 1, 1977, and, at that time, he therefore still held a geothermal resources lease on 1,913.96 acres. His lease account therefore was still chargeable for and he was obliged to pay rental on this amount of land. A lessee is not permitted to continue his lease in effect only on desired acreage and to relinquish the balance of the leasehold by submitting partial payment designated as rental for the desired acreage. See D. Miller, supra.

The exception set out in 43 CFR 3244.2-2(a), allowing for late payment of the balance of rental where there is a nominal deficiency in the amount timely submitted, does not apply, since the deficiency in appellant's payment was in excess of 1 percent of the total due.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Frederick Fishman
Administrative Judge